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O Sale of Goods
File No 51

Legal Dept

A BRANCH

Subject: — Opinions under the

Indian Sale of

Goods Act, 1930.

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File No. O. Sale of Goods/51

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C O N T E N T S

Legal Department File No. Q. Sale of Goods/El.

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Indian Sale of Goods Act, 1930.

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| 2. | <u>17821</u>
<u>8-11-1951</u> | Whether M/s. Vika Chemical Works should be held responsible for the loss of 45 old tons. | 5-10. |

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Revenue Department.
L.D.R.L. No. 19144 dt. 14-9-51.

Submitted.

It appears that the stock of Kuski, and Naka of husked rice in Godowns of Hatar Taluka was auctioned by the Mamlatdar of Hatar Taluka on 31-4-1951 and at the auction sale Shri M.D. Patel gave the highest bid of Rs. 2-7-0 per Bengali Maund for Kuski and Rs. 4-14-0 per Bengali Maund for Naka. His bid being then highest was accepted by the Mamlatdar and a sum of Rs. 465/- being 1/4th of the price of the stuff sold was deposited by the party then and there. The auction sale, it appears, was subject to confirmation of Government and the sale was not confirmed till 22nd June 1951 on which date the sale was approved by Government and the confirmation was communicated to the party on 26th June 1951. It is alleged by the party that prior to this confirmation of the ^{sale} sale, he had informed the Collector by the end of May that he was withdrawing his offer and requested him to return his deposit. On 15th June 1951, the party appears to have served a notice on the Collector requesting him to return his deposit on the ground that the goods were not delivered within a reasonable time, that the sale was not confirmed though two months had passed and thirdly because the goods had deteriorated during the interval. No reply, it appears, was given to this notice and he was informed on 26-6-1951 that his bid was confirmed. The party is not willing to accept the stuff and the matter has been referred to R.L.A. for advice.

D.G. (Civil)

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Auction Sale
Revocation of
bid before
acceptance -

The question for consideration is whether the party was legally competent to withdraw the offer before the acceptance was communicated to him. The terms and conditions subject to which the auction was held are not included in these papers which are forwarded to the B.L.A. for advice. The bid at the auction sale constitutes the offer and being only an offer a bid may be retracted at any time before it is accepted. In this case the acceptance of 1/4th amount did not amount to acceptance of the offer, as the sanction of Government was legally necessary for completing the contract. Even if there were a condition in the conditions of the auction sale that the bidding shall not be retracted, such a condition would be inoperative in law. It is alleged that the bidder wrote to the Collector at the end of May 1951 withdrawing his offer. It is further alleged that he served the Collector with notice on 15th June 1951 calling upon him to return his deposit on the ground that the sale was not confirmed by Government within a reasonable time. There does not appear to be anything in the papers forwarded to Legal Department to substantiate these allegations. If either or both of these allegations be true, it would amount to the withdrawal of the offer before its acceptance by Government, which the bidder was perfectly entitled to do; and he cannot be compelled to accept the goods.

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 Additional Secretary to Government.

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Legal Department.

The Secretary, A. & P. D. considers that M/s. Vikas Chemical Works cannot be held responsible for the loss of 45 odd tons that has occurred. Since, however, the Sugar Factories contend that one of the conditions of ^{sale} ~~else~~, namely, despatch after due weightment, has not been complied with by this State Government, the Secretary, A. & P. D. desires to know as to who should be held liable for the loss that has occurred.

Under the agency contract entered into between the Union Government and M/s Vikas Chemical Works, the latter Company is appointed as clearing and forwarding Agents for the clearance, storage and distribution of chemical fertilizers. Under condition 1(i) the Agents are responsible for the clearance of the imported fertilizers on arrival at the port of Bombay and the payment of all landing and clearing charges and other charges of and incidental thereto. Under condition 1(iv), the Agents shall also dispose of the stores under and in accordance with the instructions issued from time to time by the Deputy Secretary to the Government of India, Ministry of Agriculture and shall not otherwise dispose them of. Condition 1(v) provides that the price to be charged f.o.b. port of entry by the Agents for the stores supplied by them in accordance with the instructions in sub-para (iv) shall be intimated to them by the Ministry of Agriculture. Condition 9 provides that unless specially instructed, the Agents will despatch fertilizers to Government nominees in sound bags at consignee's risk, without insurance. Any losses in transit will be to consignee's account. In para 2 of their letter No. F-3-54/50-M dated 21-12-1950, a copy of which was endorsed to all the State Governments for information, the Ministry of Food and Agriculture issued instructions, to all the Clearing and Forwarding Agents in the following terms:

"As regards despatches to various consignees, I can further to add that the clearing and forwarding agents are responsible to see that the actual quantity as per rail way receipts is put on rail after weightment in sound and good packing and the consignees should be billed for accordingly."

In the endorsement, it was pointed out that "the consignees are responsible to check up the weight of the consignments on arrival at destinations and proceed against the Railway Authorities for any losses in transit represented by difference between the quantity as per Railway Receipt and that actually received." From para 3 of the said letter, it is obvious that the Agents are responsible to see that "the actual quantity as per Railway receipts is put on rail after weightment," and that the consignees are permitted to bill for such weightment. In their letter dated 12-7-1951 addressed to the Ministry of Food and Agriculture, M/s Vikas Chemical Works, however, informed the Government of India that "when the allotment was made to sugar mills and we were asked to deliver the material after proper weightment, we wrote to the Government that if the Government or the allottees were agreeable to pay the weightment charges, we would be quite willing to do so as individual bags were to be weighed then owing to the weigh-bridge being out of order etc."

M/s Vikas Chemical Works are not the Agents of the Bombay State. They, however, appear to distribute the ^{among the various allottees named by the Bombay State} quantity of fertilizer allotted to the Bombay State, subject to the terms and conditions laid down in the Agency agreement. It is true that the Director of Agriculture asked M/s Vikas Chemical Works to despatch the ^{Sulphate} sulphate of ammonia to the allottees after actual weightment, but they did not do so because, as stated ~~above, the direction to the agents contained no~~ above, the direction to the agents contained no instruction as to who should bear the cost of weightment

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and the consignees did not volunteer to pay the charges. Besides there is nothing on record to prove that either the consignees themselves or their representatives cared to be present at the time of despatch of the fertilizers to verify the weight thereof. Under section 37(1) of the Indian Sale of Goods Act, where the seller delivers to the buyer quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered he shall pay for them at the contract rate. By accepting the lesser quantity, the buyer is not precluded from suing for damages on the ground of short delivery or claiming a proportionate refund where he has paid for the whole of the quantity contracted for. Section 37(1) will have no application unless it is established that there was short delivery of goods. From the weight entered in the Railway Receipt and the quantity actually received at the destination it will be obvious that the loss was in transit, and that there was no deliberate short supply.

Since, however, the material is despatched f.o.r. on delivery of the goods to the common carrier, the property and risk in the goods would pass to the buyer (See Sections 23(2), 26(1) and 39(1) of the Indian Sale of Goods Act) and neither Government nor Vika Chemical Works appear to be responsible for such loss.

Sd./-

Additional Secretary to Government.

H.R. to A. & P.D., No. 17801; dated the 9th November, 1951

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